HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION No.14505 of 2007

Date: September 24, 2007

Between:
Md.Jaleel. ... Petitioner

And

The Regional Passport Officer,
Regional Passport Officer. ... Respondent

* * *

ORDER:

Heard the counsel. Notice before admission was ordered by this Court on 09.7.2007.

2. The writ petition is filed for a writ of *Mandamus* declaring action of the respondent in not issuing fresh passport by changing the petitioner's date of birth as 10.5.1979 instead of 10.5.1075 and insisting the petitioner to approach civil court, as illegal, arbitrary, against the principles of natural justice and contrary to their own circular issued by the Government of India and pass such other suitable orders.

3. It is stated that the petitioner completed his VII Class in the year 1993 and also completed Board of Secondary Education in March, 1996. It is also stated that he born on 10.5.1979 and the same was

shown in his VII Class and also in Board of Secondary Certificate. It is also stated that the petitioner obtained passport-bearing No.A6474992 through an agent and the agent showed his date of birth wrongly as 10.5.1075 instead of 10.5.1979. It is also stated that the petitioner, after coming to know the entering of wrong date of birth in the passport, approached the respondent for correction of the same as per his VII Class certificate and S.S.C. certificate and also the certificate issued by the Municipality, but the respondent refused for the same and directed him to approach civil court to obtain declaratory order. It is further stated that question of seeking declaration in civil court to amend date of birth as per VII Class certificate and S.S.C. certificate and also certificate issued by the Municipality in the fresh passport arise only when he obtained earlier passport by filing any certificate issued by Municipal Corporation or any educational institution and again if the petitioner wants to amend the fresh passport, as per Clause (b) of the Circular dated 18.4.2001 issued by the Government of India. He placed reliance on the decision in Mohd. Nasrullah Khan V. Regional Passport Officer, Hyderabad. In such circumstances, the petitioner approached this court.

4. In **Mohd. Nasrullah Khan** V. **Regional Passport Officer, Hyderabad**[1] it was held thus:

> "In Ali Imran V. Regional Passport Officer, Secunderabad, I have considered the Circular dated 18.4.2001 issued by the Government of India in the Ministry of External Affairs pursuant to the judgment of the High Court of Judicature at Bombay in Civil Writ Petition No.1072 of 2000. The instructions/clarifications

issued in the said Circular read as under.

(a) Where an applicant is seeking rectification/correction of a mistake in the entry on date of birth/place of birth in the passport, PIA (passport issuing authority) may after verifying/satisfying himself, affect the correction treating the same as a technical correction. There is no need for a declaratory order in such cases.

(b) Where a competent authority issuing a birth certificate or an educational board registering a date of birth along with place of birth as valid were to issue any correction or amendment, PIA may effect the necessary amendment in the passport without insisting on a Court Order. As per the provisions of Section 21 of the General Clauses Act, 1997, a competent authority issuing a certificate could also make necessary amendments to the same.

(c) Where the initial entry has been made on the basis of a supportive document issued by one competent authority i.e., school/educational authority and the applicant subsequently requests for a change on the basis of a certificate issued by another competent authority i.e., municipal authorities resulting in conflicting sources of valid proof, the PIA should direct the applicant to obtain a civil order from a competent court of jurisdiction, certifying the valid date of birth/place of birth.

In view of the above clarifications, I disposed of the said case

observing as under:

> Be it noted that under the provisions of the Passports Act, 1967, no power is vested in the Regional Passport Officer to correct entries in the passport. However, pursuant to the judgment of the High Court of Bombay referred to hereinabove, it is now permissible for the Regional Passport Officer to accept applications for rectification/correction. Nonetheless, as per clause (c) above, if an entry had been made on the basis of a supportive document issued by one authority i.e., school or educational authority and subsequently the applicant requests for a change of the entry on the basis of the certificate issued by another authority the passport issuing authority is required to direct the applicant to obtain a proper declaration from the civil Court.
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> In this case, the petitioner has produced Secondary School Certificate to prove that his correct date of birth is 1-4-1976. Therefore, the claim of the petitioner is well supported and squarely falls in Clause (a) of the Circular dt. 18.4.2001."

5. In **Durgempudi Venkata Raghava** V. **Passport Officer**, **Ministry of External Affairs**, **Passport Office**, **Hyderabad**[2] it was held as hereunder.

> "Placing reliance on the clarification issued on the aforesaid Circular, Writ Petition No.8533 of 2004 was disposed of directing the respondents to consider the representation of the petitioner along with the Secondary School Certificate issued by Secretary, Board of Secondary Education, Andhra Pradesh and pass appropriate orders in the light of the observations made in the said judgment.
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> It is no doubt true that the present Writ Petition was filed in the year 1997 and the Government under Ministry of External Affairs issued the Circular referred to supra on 18.4.2001. As can be seen from the material available on record, the certificates, which had been produced before this

Court, it is clear that it is only a bona *fide* mistake, which had crept in.

Apart from this aspect of the matter, no counter-affidavit had been filed denying the specific averment made in the affidavit filed in support of Writ Petition that along with the application form for passport, the Travel Agent also enclosed copies of S.S.C. certificate, Intermediate certificate and also Degree certificate. Therefore, it is evident that without verifying the date of birth, the respondent authority just took the date of birth as filled up in the application form and issued the passport. Hence, it is needless to say that it is only a bona fide mistake.

The learned Senior Standing Counsel for Central Government, no doubt submitted that in such a situation, if the passport was issued prior to the said circular it would be proper to give an opportunity to the Writ Petitioner to file fresh application for issuance of passport to the competent authority.

In the light of the facts and circumstances, especially in view of Clause (a) of the Circular, dated 18.4.2001 referred to supra and also in view of the fact that all these copies of documents also had been produced at the time of filing of the application form but a *bona fide* mistake had crept in, the Writ Petition is disposed of with the following directions."

In the light of the facts and circumstances, the action of the respondent is not just and proper. In the light of the same, the writ petition is disposed of directing the respondent to receive application from the petitioner for issuance of a fresh passport changing petitioner's date of birth as specified in the relief prayed for in the writ petition and take appropriate action in accordance with law in the light of the decisions specified supra and the Circular referred to above,

within a period of four weeks from the date of receipt of a copy of this order. No order as to costs.

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(P.S.NARAYANA, J.)

Date: September 24, 2007.

BSB

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[1] 2005(1) ALT 95

[2] 2005 (1) ALT 751